

REMARKS

In the Final Office Action, dated April 3, 2008, claims 1, 2, 4 – 9, 11 – 18 and 21 – 26 are pending.

35 U.S.C. §103

Under 35 U.S.C. §103(a), the Office Action rejects claims 1 – 2, 4 – 9 and 11 – 16 over Herz (U.S. Pat # 5,758,257), in view of Shapira (U.S. Pat # 7,058,806) and Kim (U.S. PG-PUB 2003/0156134); claims 17 – 18 and 23 over Herz, in view of Cook (U.S. PG-PUB 2003/0193504); and claims 21 – 22 and 24 – 26 over Herz and Cook, and further in view of Shapira.

Applicant respectfully reiterates and continues the arguments set forth in Applicant's responses dated August 25, 2006, January 19, 2007, July 10, 2007, January 4, 2008 and June 3, 2008.

Applicant submits that for at least the following reasons, claims 1 – 2, 4 – 9 and 11 – 16 are patentable over Herz, Shapira, and Kim, either singly or in combination.

For example, claim 1 requires:

“affirmatively reporting by the profiled celebrity the recommendation to the user through an image of the celebrity while simultaneously displaying the image of the celebrity to create an appearance during the reporting that the celebrity is making a personal recommendation to the user.”

In the Advisory Action, page 2, it is noted that the feature upon which Applicant relies (i.e., “affirmative” … “reporting by the profiled celebrity”) are not recited in the claims. In response to the Advisory Action, Applicant has clarified the claim language in the present amendment. Applicant notes that these claim amendments are for clarification purposes only, and are not narrowing amendments.

Herz, column 45, lines 34 – 55, discloses that from the agreement matrix, a list of preferred programs is determined. Applicant submits that although the listing is available for user's perusal and selection of the desired programs, nothing in Herz teaches or suggests that there is an affirmative reporting by the profiled celebrity to create an appearance during the reporting that the celebrity is making a personal recommendation to the user. Applicant submits that it is clear from the claim language that the affirmative reporting by the profile celebrity is patentably distinct from the teaching of Herz, which apparently discloses the formation of a recommendation using a celebrity profile. Therefore, Herz fails to teach the claimed feature: affirmatively reporting by the profile celebrity the recommendation to the user.

The Office Action argues that an image of the instant celebrity accompanies that instant recommendation list of programs presented to the subscriber, which notifies the subscriber that the recommendation list of programs are indeed based on the instant celebrity profile. However, this is just an enhanced channel listing in Herz, where the celebrity profile is also identified by the picture of the celebrity. Applicant submits that notifying the user that the recommendation is based on a celebrity profile is not the same as the affirmative reporting by the profiled celebrity to create an appearance during the reporting that the celebrity is making a personal recommendation to the user. Applicant submits that there is a functional difference between "notifying the user that the recommendation is based on a celebrity profile" and "affirmatively reporting by the profiled celebrity", because the former informs the users what profile is being used and would appear that the notification comes from the system, not the celebrity; while the later reports affirmatively by the profiled celebrity recommendation to the user with the appearance during the reporting that the celebrity is making a personal recommendation to the user. Therefore, Applicant submits that Herz and Shapira, alone or in combination, fail to teach or suggest the affirmative reporting by the profiled celebrity to create an appearance during the reporting that celebrity is making a personal recommendation to the user.

In the Office Action, page 8, it is conceded by the Office that Herz does not discuss any images associated with a celebrity or any other profile, and that Shapira does not discuss

anything to: create an appearance during the reporting that the celebrity is making a personal recommendation to the user, as claimed. Because of these deficiencies in Herz and Shapira, the Office cited Kim, which apparently relates to organizational avatars used in on-line services.

Applicant submits that using the organizational avatars taught by Kim does not produce the feature: create an appearance during the reporting that the celebrity is making a personal recommendation to the user, as claimed. This is because, as disclosed in Kim, paragraph [0030], the organizational avatars are used for promoting the products or services of the organization. Furthermore, since at least a portion of the image of the avatar is typically owned by the organization (Kim, paragraph [0021]), a user will naturally think that any recommendation made by the avatar, is made on behalf of the organization, not by the celebrity personally himself or herself. Applicant submits that an organization is not an individual; while a celebrity has an identity and lifestyle that a user can associate with and therefore will be more likely to trust the personal recommendation made by the celebrity. On the other hand, Kim teaches an avatar that represents an organization to promote products and services for the organization (Kim, paragraph [0030]) and therefore the recommendation made by the avatar does not have the same level of trustworthiness as the personal recommendation made by the celebrity. Furthermore, since an avatar is known to represent the organization, the recommendation made by the avatar would clearly create an appearance that the recommendation comes from the organization. However, the recommendation reported affirmatively by the profiled celebrity would create an appearance that the celebrity is making a personal recommendation to the user.

In the Advisory Action, page 5, it is argued that even if there is a distinction whether the celebrity/avatar is making the recommendation on behalf of the organization, a customer using any system would still need to access whatever database or service interface necessary to get the recommendation; and that even if it appeared that the celebrity himself was making the recommendation; it would still be known to the customer that the recommendation came as a result of a service/service provider that the instant customer has accessed. Notwithstanding this argument, Applicant points out that one of the claimed features is to provide an appearance that

the celebrity is making a personal recommendation to the user. The teaching of Kim fails to create such an appearance.

Therefore, Herz, Shapira and Kim, either singly or in combination, fail to disclose the claimed feature: affirmatively reporting by the profiled celebrity the recommendation to the user through an image of the celebrity while simultaneously displaying the image of the celebrity to create an appearance during the reporting that the celebrity is making a personal recommendation to the user.

In view of at least the foregoing, Applicant submits that claim 1 is patentable over Herz, Shapira and Kim, either singly or in combination.

Similarly, independent claim 8 requires:

“reporting means for the lifestyle recommendation device affirmatively announcing by the profiled celebrity the recommendation to the user through an image of the celebrity while simultaneously displaying the image of the celebrity to create an appearance during the reporting that the celebrity is making a personal recommendation to the user through the lifestyle recommendation device.”

Also, independent claim 15 requires:

“the lifestyle recommendation machine affirmatively reporting by the profiled celebrity the recommendation to the user through an announcement by the celebrity while simultaneously displaying an image of the celebrity to create an appearance that the celebrity is making a personal recommendation to the user through the lifestyle recommendation machine.”

Furthermore, independent claim 16 requires:

“computer readable program code means for affirmatively reporting by the profiled celebrity the recommendation to the user through a still image of the celebrity while simultaneously displaying the still image of the celebrity to create an appearance

that the celebrity is making a personal recommendation to the user through the lifestyle recommendation machine.”

Applicant essentially repeats the above arguments for claim 1 and applies them to claims 8, 15 and 16 pointing out why Herz, Shapira and Kim, either singly or in combination fail to disclose the above claimed features. Therefore, claims 8, 15 and 16 are patentable over Herz, Shapira and Kim, alone or in combination. Dependent claims 2, 4 – 9 and 11 – 14 are also patentable because they respectively depend from claims 1 and 8, with each claim containing further distinguishing features.

Applicant further submits that for at least the following reasons claims 17 – 18 and 21 – 26 are patentable over Herz, Shapira and Cook, alone or in combination.

For example, independent claim 17 requires:

“affirmatively reporting by the profiled synthetic celebrity or fictitious character the recommendation to the user through the synthetic celebrity or fictitious character to create an appearance during the reporting that the synthetic celebrity or fictitious character is making a personal recommendation to the user.”

Applicant basically repeats similar arguments as above for claim 1 and applies them to claim 17 pointing out why Herz and Shapira, alone or in combination fail to disclose the above claimed features. Furthermore, Applicant submits that Cook does not in any way cure the defects pointed out above with respect to Herz and Shapira. Therefore, claim 17 is patentable over Herz, Shapira and Cook, either singly or in combination. Claims 18 and 21 – 26 are also patentable because at least they depend from claim 17, with each claim containing further distinguishing features.

Withdrawal of the rejection of claims 1, 2, 4 – 9, 11 – 18 and 21 – 26 under 35 U.S.C. §103(a) is respectfully requested.

Conclusion

In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance. Reconsideration and allowance of all the claims are respectfully solicited.

In the event there are any errors with respect to the fees for this response or any other papers related to this response, the Director is hereby given permission to charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account No. 14-1270.

Respectfully submitted,

PHILIPS INTELLECTUAL PROPERTY & STANDARDS



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